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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,748	11/09/2006	Claude Thibodeau	BRKP:004US	3767
32425 7590 05/14/2009 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER SCHMIDTMANN, BAHAR				
ART UNIT		PAPER NUMBER		
4131				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,748

Applicant(s)

THIBODEAU ET AL.

Examiner

BAHAR SCHMIDTMANN

Art Unit

4131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

This Office Action details a Restriction Requirement due to Lack of Unity and Six Species Election Requirements.

Status of the Claims/Priority

1. Claims 1-35 are pending in the current application. This application is a 35 U.S.C. § 371 National Stage Filing of International Application No. PCT/CA04/00473, filed 26 March 2004.

Unity of Invention

2. A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. For example, a corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key.

A process is "specially adapted" for the manufacture of a product if the claimed process inherently produces the claimed product with the technical relationship being present between the claimed process and the claimed product. The expression

"specially adapted" does not imply that the product could not also be manufactured by a different process.

As set forth in Rule 13.1 of the Patent Cooperation Treaty (PCT), the international application shall relate to one invention only or to a group of inventions. Moreover, as stated in PCT Rule 13.2, the requirement of unity of invention referred to in PCT Rule 13.1 shall be fulfilled where a group of inventions is claimed in one and the same international application only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression special technical features shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art, so linked, as to form a general inventive concept.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

When Claims Are Directed to Multiple Categories of Inventions: As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: (1) A product and a process specially adapted for the manufacture of said product; or (2) A product and process of use of said product; or (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or (4) A process and an apparatus or means

specifically designed for carrying out the said process; or (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process. Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

Election Requirement

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- I. Claim(s) 1-9, 23-30 and 35, drawn to a particulate absorbent material, comprising a molecular network of starch molecules, the starch molecules comprising at least 90% w/w amylopectin, wherein said particulate absorbent material comprises particles ranging from 89 μm to 589 μm .
 - II. Claim(s) 10-22, drawn to a process for producing a particulate absorbent material.
 - III. Claim(s) 31-34, drawn to the use of the absorbent material in the manufacture of an absorbent product. This is interpreted as the method of making an absorbent product.
4. The *special technical feature* among all groups is a particulate absorbent material comprising a molecular network of starch molecules, the starch molecules comprising at least 90% w/w amylopectin, wherein said particulate absorbent material comprises particles ranging from 89 μm to 589 μm . The inventions of Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2,

they lack the same or corresponding *special technical features* for the following reasons: Shasha et al. (US Patent 5,997,945, issued 7 December 1999, cited in PTO-892) teaches formation of adherent granules by mixing starch and anhydrous CaCl_2 , in a weight percent ratio of starch to water about 39:1, and allowing water to be absorbed from the air (column 10, lines 6-9). Shasha et al. also teaches that said starch is preferably waxy cornstarch (column 7, lines 13-14), and that waxy cornstarch contains only amylopectin (column 7, lines 10-11). Shasha et al. teaches that the desired particle size can be obtained by mesh sieving through a 20 mesh to obtain particles having a diameter of as small as 425 μm (column 11, lines 5-10). Consequently, the particulate absorbent lacks a *special technical feature* as defined by PCT Rule 13.2 as it does not possess an inventive step over the teachings of the prior art.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after

the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Rejoinder

6. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Election of Species

7. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

This application contains claims directed to the following patentably distinct compositions comprising a **First** species of waxy starch (e.g. waxy maize starch, as disclosed in claim 5), a **Second** species of cross-linker (e.g. sodium trimetaphosphate, as disclosed in claim 7), a **Third** species of alkali (e.g. sodium hydroxide, as disclosed in claim 18), a **Fourth** species of co-absorbent material (e.g. synthetic superabsorbent polymer of acrylic acid, as disclosed in claim 26), a **Fifth** species of liquid (e.g. water, as disclosed in claim 31), a **Sixth** species of absorbent product (e.g. diapers, as disclosed in claim 32).

If Applicant elects the invention of Group I, then Applicant is further required to elect from the following **First**, **Second**, and **Fourth** Election of Species requirements.

If Applicant elects the invention of Group II, then Applicant is further required to elect from the following **Second**, and **Third** Election of Species requirements.

If Applicant elects the invention of Group III, then Applicant is further required to elect from the following **Fifth**, and **Sixth** Election of Species requirements.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. **Applicant is advised that election of a genus, such as synthetic superabsorbent polymers will be considered non-responsive.** An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Currently, the following claim(s) 1-9, 23-30, and 35 are generic to waxy starch, cross-linker, and co-absorbent material. Claim(s) 10-22 are generic to cross-linker and alkali. Claim(s) 31-34 are generic to absorbent product.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mrs. BAHAR SCHMIDTMANN whose telephone number is (571)270-1326. The examiner can normally be reached on Mon-Thurs 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on (571)272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bahar Schmidtman/
Patent Examiner, Art Unit 4131

/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624